

Federal Energy Regulatory Commission

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Administrative Procedure Act and the Commission's rules concerning off-the-record communications, as well as the nature of the Commission's licensing and certificating processes and of the Commission's review of jurisdictional rates, terms and conditions, place some limitations on the nature and type of consultation that the Commission may engage in with any party in a contested case. Nevertheless, the Commission will endeavor, to the extent authorized by law, to reduce procedural impediments to working directly and effectively with tribal governments.

(e) The Commission, in keeping with its trust responsibility, will assure that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes or Indian trust resources.

(f) The Commission will seek to engage tribes in high-level meetings to discuss general matters of importance, such as those that uniquely affect the tribes. Where appropriate, these meetings may be arranged for particular tribes, by region, or in some proceedings involving hydroelectric projects, by river basins.

(g) The Commission will strive to develop working relationships with tribes and will seek to establish procedures to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. To assist in this effort, the Commission is establishing the position of tribal liaison. The tribal liaison will provide a point of contact and a resource for tribes for any proceeding at the Commission.

(h) Concurrently with this policy statement, the Commission is issuing certain new regulations regarding the licensing of hydroelectric projects. In this connection, the Commission sets forth the following additional policies for the hydroelectric licensing process.

(i) The Commission believes that the hydroelectric licensing process will benefit by more direct and substantial consultation between the Commission staff and Indian tribes. Because of the unique status of Indian tribes in relation to the Federal government, the Commission will endeavor to increase

direct communications with tribal representatives in appropriate circumstances, recognizing that different issues and stages of a proceeding may call for different approaches, and there are some limitations that must be observed.

(j) The Commission will seek to notify potentially-affected tribes about upcoming hydroelectric licensing processes, to discuss the consultation process and the importance of tribal participation, to learn more about each tribe's culture, and to establish case-by-case consultation procedures consistent with our *ex parte* rules.

(k) In evaluating a proposed hydroelectric project, the Commission will consider any comprehensive plans prepared by Indian tribes or inter-tribal organizations for improving, developing, or conserving a waterway or waterways affected by a proposed project. The Commission will treat as a comprehensive plan, a plan that:

(1) Is a comprehensive study of one or more of the beneficial uses of a waterway or waterways;

(2) Includes a description of the standards applied, the data relied upon, and the methodology used in preparing the plan; and

(3) Is filed with the Secretary of the Commission. *See generally* 18 CFR 2.19.

[Order 635, 68 FR 46455, Aug. 6, 2003]

STATEMENTS OF GENERAL POLICY AND INTERPRETATIONS UNDER THE FEDERAL POWER ACT

AUTHORITY: Sections 2.2 through 2.13, issued under sec. 309, 49 Stat. 858; 16 U.S.C. 825h, unless otherwise noted.

§ 2.2 Transmission lines.

In a public statement dated March 7, 1941, the Commission announced its determination that transmission lines which are not primary lines transmitting power from the power house or appurtenant works of a project to the point of junction with the distribution system or with the interconnected primary transmission system as set forth in section 3(11) of the Act are not within the licensing authority of the Commission, and directed that future applications filed with it for such licenses be referred for appropriate action to

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the Federal department having supervision over the lands or waterways involved.

[Order 141, 12 FR 8471, Dec. 19, 1947. Redesignated by Order 147, 13 FR 8259, Dec. 23, 1948]

§ 2.4 Suspension of rate schedules.

The Commission approved and adopted on May 29, 1945, the following conclusions as to its powers of suspension of rate schedules under section 205 of the act:

(a) The Commission cannot suspend a rate schedule after its effective date.

(b) The Commission can suspend any new schedule making any change in an existing filed rate schedule, including any rate, charge, classification, or service, or in any rule, regulation, or contract relating thereto, contained in the filed schedule.

(c) Included in such changes which may be suspended are:

(1) Increases.

(2) Reductions.

(3) Discriminatory changes.

(4) Cancellation or notice of termination.

(5) Changes in classification, service, rule, regulation or contract.

(d) Immaterial, unimportant or routine changes will not be suspended.

(e) During suspension, the prior existing rate schedule continues in effect and should not be changed during suspension.

(f) Changes under escalator clauses may be suspended as changes in existing filed schedules.

(g) Suspension of a rate schedule, within the ambit of the Commission's statutory authority is a matter within the discretion of the Commission.

(Natural Gas Act, 15 U.S.C. 717–717w (1976 & Supp. IV 1980); Federal Power Act, 16 U.S.C. 791a–828c (1976 & Supp. IV 1980); Dept. of Energy Organization Act, 42 U.S.C. 7101–7352 (Supp. IV 1980); E.O. 12009, 3 CFR part 142 (1978); 5 U.S.C. 553 (1976))

[Order 141, 12 FR 8471, Dec. 19, 1947. Redesignated by Order 147, 13 FR 8259, Dec. 23, 1948, and amended by Order 303, 48 FR 24361, June 1, 1983; Order 575, 60 FR 4852, Jan. 25, 1995]

§ 2.7 Recreational development at licensed projects.

The Commission will evaluate the recreational resources of all projects under Federal license or applications

therefor and seek, within its authority, the ultimate development of these resources, consistent with the needs of the area to the extent that such development is not inconsistent with the primary purpose of the project. Reasonable expenditures by a licensee for public recreational development pursuant to an approved plan, including the purchase of land, will be included as part of the project cost. The Commission will not object to licensees and operators of recreational facilities within the boundaries of a project charging reasonable fees to users of such facilities in order to help defray the cost of constructing, operating, and maintaining such facilities. The Commission expects the licensee to assume the following responsibilities:

(a) To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources afforded by the project. To the extent consistent with the other objectives of the license, such lands to be acquired in fee for recreational purposes shall include the lands adjacent to the exterior margin of any project reservoir plus all other project lands specified in any approved recreational use plan for the project.

(b) To develop suitable public recreational facilities upon project lands and waters and to make provisions for adequate public access to such project facilities and waters and to include therein consideration of the needs of persons with disabilities in the design and construction of such project facilities and access.

(c) To encourage and cooperate with appropriate local, State, and Federal agencies and other interested entities in the determination of public recreation needs and to cooperate in the preparation of plans to meet these needs, including those for sport fishing and hunting.

(d) To encourage governmental agencies and private interests, such as operators of user-fee facilities, to assist in carrying out plans for recreation, including operation and adequate maintenance of recreational areas and facilities.

(e) To cooperate with local, State, and Federal Government agencies in planning, providing, operating, and